IN THE

Supreme Court of the United States

Nos. 329-330 **October Term—1950**

AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES, OF AMERICA, DIVISION 998, *et al.*,
Petitioners,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, *et al.*,
Respondents.

On Writ of Certiorari to the Supreme Court of the State of Wisconsin

BRIEF FOR STATE OF NEW JERSEY AS *AMICUS CURIAE*

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Statement

In their petition for certiorari the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Division 998 et al., the Petitioners herein, urged the importance of the issues involved in the instant appeals in that some eleven States have adopted legislation similar to that which is the subject matter of these appeals. The State of New Jersey is one of those States. Because of the importance to the State of New Jersey of the basic issues presented in these cases, this State prays the indulgence of this Court in submitting this brief *amicus curiae* in support of the right of a sovereign State to adopt regulatory legislation designed solely to assure to the people of this State an uninterrupted supply of public utility services deemed by the said State to be essential to the health and welfare of its people.

The basic purpose behind the enactment of the National Labor Relations Act was to provide a forum for the settlement of labor disputes at the federal level. The effect upon interstate commerce of labor disputes was the justification for this undertaking. The situation having to do with labor disputes in public utilities is in no wise similar. Here the basic purpose is not the settlement of labor disputes but rather the continuance of essential public utility services. Settlement of labor disputes in public utilities is merely incidental to such basic purpose. The New Jersey Legislature was concerned with preventing the cessation of or crippling interference with public utility services declared by the Legislature to be life essentials and concerning which New Jersey's highest Court said in *Van Riper* v. *Traffic Telephone Workers' Federation of New Jersey*, 2 N. J. 335, 345 (Sup. Ct., 1949):

> "Where by reason of a strike, work stoppage or lockout the flow of the services of any of these essen-

> tials of community life is halted or impaired the State has not only the right but a pressing duty to step in and prevent the continuance of such stoppage or impairment and to take appropriate measures to restore them. If instead of a stoppage or curtailment of essential services there is an imminent danger of their being halted or curtailed, the State has the right as well as the obligation of preventing the occurrence of any such catastrophe, *Cf. United States* v. *United Mine Workers*, 330 U. S. 258, 67 S. Ct. 677, 91 L. Ed. 884 (1947)."

Although New Jersey realizes that this Court cannot consider the merits of the New Jersey legislation on this appeal, the New Jersey legislation is set forth at length in the appendix to this brief and is referred to hereafter for the purpose of demonstrating that (1) the purpose of this type of legislation is that which has just been stated; (2) we are not here concerned with the usual issues of a labor dispute affecting only the parties thereto but rather with the effect of certain disputes upon outsiders, the general public; (3) the same basic issues are presented by the New Jersey and Wisconsin statutes; and (4) the anti-strike and compulsory arbitration questions are not independent issues arising separately and apart from the question of the power of a state to enact protective legislation under its police power but are only subordinate issues in that such matters may constitute a limitation upon the lawful means a State may otherwise use to attain a lawful objective.

The Petitioners have complained because certain States have adopted laws which provide for compulsory arbitration and which prohibit the right to strike in industries over which the National Labor Relations Board has asserted jurisdiction.

The New Jersey statutes provide for a sixty day notice of intention to strike. N. J. S. A. 34:13B-18; App. page viii. In case of a strike or lockout, seizure by the State is pro-

vided. N. J. S. A. 34:13B-13; App. page v. Strikes are made unlawful after seizure. N. J. S. A. 34:13B-19; App. page ix. Provision is made for the appointment of a Board of Arbitration, hearing and determination. N. J. S. A. 34:13B-20, 21, 23, 27; App. pages ix to xv. Penalties, are prescribed for unlawful lockouts, strikes or work stoppage. N. J. S. A. 34:13B-24; App. page xiii. It is apparent that the basic purpose of the legislation is to prevent an interruption or curtailment of essential public utility services. The New Jersey Courts have so found.

The basic question before this Honorable Court is whether a sovereign State is authorized under its police power to so regulate public utilities and their employees as to prevent work stoppages in intrastate services furnished by public utility companies and deemed by a state legislature to be life essentials. Determination of this basic question involves the determination of the question whether the individual rights of employer and employees are paramount to the vital interests of the public as a whole.

It may not successfully be argued that the general public is not vitally concerned with a continuance of the flow of essential public utility services. Since the need is present, it would appear that the primary objective of such regulatory legislation is within the police power of a State and that the only question left to be determined would be whether the means utilized to accomplish the end are reasonable. New Jersey will urge upon this Court the reasonableness of the means.

The State respectfully suggests consideration of the following:

(1) That the purpose motivating the adoption of the National Labor Relations Act was the settlement of labor disputes, whereas the instant legislation is primarily concerned with the interests of outside parties, the public, in the maintenance of essential utility services;

(2) That the Labor Management Relations Act concerns itself primarily with the affairs of the parties to such labor disputes whereas the instant legislation seeks to protect innocent bystanders from certain dangers which will result from a disagreement of the parties;

(3) That the State has its intrastate commerce which it may protect under its police power notwithstanding federal legislation with respect to interstate commerce, subject only to the limitation that in so doing the State does not interfere with, hamper or impede interstate commerce.

(4) That there must be clear and convincing proof of a congressional intent to limit the power of the State to protect the health and welfare of its people.

(5) That there is no provision in the federal legislation for protection of the people in the event of an emergency at the State level and Congress could, therefore, not have intended to preempt the field with respect to settlement of labor disputes in public utilities which endanger the welfare of the people.

ARGUMENT

POINT I

Reasonable regulations designed to prevent an interruption or curtailment of essential intrastate services furnished by public utility companies under State franchises may be adopted by a State under its police power.

The Petitioners have pointed out that, in *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. 2nd 51, 53 (C. C. A. 4th, 1944), cert. den. 321 U. S. 795, it was

held that the National Labor Relations Act was applicable to a utility doing an intrastate business because of its effect upon interstate commerce. The Court cited a number of cases including *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1936) wherein this Court said (p. 30):

> "The authority of the Federal government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce among the several States and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system."

The Court was there seeking to determine the right of the Federal government to regulate certain labor relations. But the need of recognizing the distinction between what is national and what is local is the more important in the instant case for the reason that we are not here primarily concerned with the exclusive right of the Federal government to determine labor disputes but rather with the more narrow and basic question whether a sovereign State may adopt regulations which are designed solely to prevent an interruption or curtailment of essential public utility services.

The needs of the State, the dangers with which the State would be constantly confronted without such regulation, are not illusory, problematical or fanciful. They are real and were so recognized by New Jersey's highest Court, which, in *Van Riper* v. *Traffic Telephone Workers' Federation, supra,* said through Chief Justice VANDERBILT (p. 345):

> "Where by reason of a strike, work stoppage or lockout the flow of the services of any of these essentials of community life is halted or impaired the State has not only the right but a pressing duty to step in and prevent the continuance of such stoppage or impairment and to take appropriate measures to

> restore them. If instead of a stoppage or curtailment of essential services there is an imminent danger of their being halted or curtailed, the State has the right as well as the obligation of preventing the occurrence of any such catastrophe, *Cf. United States* v. *United Mine Workers*, 330 U. S. 258, 67 S. Ct. 677, 91 L. Ed. 884 (1947)."

A number of the States have determined that the welfare of the people requires that the public be protected against the dangers incident to an interruption or curtailment of named essential public utility services. The State of New Jersey respectfully submits that regulations protecting the public against such dangers are within the police power of the State.

It has been said that the police power is the least limitable of the powers of government. *Sligh* v. *Kirkwood*, 237 U. S. 52, 59 (1914); *Hall* v. *Geiger Jones Co.*, 242 U. S. 539, 548 (1916); *Queenside Hills Realty Co.*, 328 U. S. 80, 83 (1945).

The Legislatures of several States have determined that a public need exists with respect to a continuance of essential utility services. The highest Courts of Wisconsin and New Jersey have confirmed the need in their respective States. In *O'Gorman & Young* v. *Hartford Fire Insurance Co.*, 282 U. S. 251, 258 (1930) it was held that the action of a state legislature in enacting a police regulation attacked as unreasonable, and of the highest court in the state in upholding its validity, indicates the evils for which it is an appropriate remedy.

It is respectfully submitted that a State is authorized under its police power to adopt regulations reasonably designed to assure to its people an uninterrupted flow of essential intrastate services furnished by public utility companies operating under state franchises.

a) The right to undertake a contract of employment in a public utility is subordinate to a valid exercise of the police power.

There is nothing complex about the instant problem. In order to assure the continuance of public utility services deemed by the Legislature to be "life essentials", the Legislature has simply prescribed certain terms upon which utility companies and their employees are permitted to enter into a contract of employment affecting intrastate commerce. Charges of involuntary servitude and of denial of civil liberties are made for the purpose of beclouding the basic issue of whether the State is authorized under its police power to regulate such contracts of employment where the public interest in the maintenance of the flow of essential services requires it.

In *Veix* v. *Sixth Ward Association*, 310 U. S. 32, 38 (1940) this Court said:

> "In Home Building & Loan Association v. Blaisdell this Court considered the authority retained by the state over contracts 'to safeguard the vital interests of its people.' The rule that all contracts are made subject to this paramount authority was there reiterated. Such authority is not limited to health, morals and safety. It extends to economic needs as well. Utility rate contracts give way to this power, as do contractual arrangements between landlords and tenants."

This was but a reassertion of the broad principle enunciated in *Atlantic Coast Line* v. *Goldsboro*, 232 U. S. 548, 558 (1913) as follows:

> "For it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the state to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can

> neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise. * * * And the enforcement of uncompensated obedience to a regulation established under this power for the public health or safety is not an unconstitutional taking of property without compensation or without due process of law."

See also *Union Dry Goods Co.* v. *Georgia Public Service Corporation*, 248 U. S. 372, 375, 376 (1918).

The rule was established at an early date by this Court in *Manginault* v. *Springs*, 199 U. S. 473, 480 (1905) wherein it was said:

> "This power, which, in its various ramifications, is known as the police power, is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort, and general welfare of the people, and is paramount to any rights under contract between individuals."

Under the police power, this Court has time after time sustained the power of the State to regulate rates to the end that the public should have the benefit of just and reasonable rates. The rationale was that the public would be burdened by exorbitant rates. It is inconceivable that it could be held that the public could be protected against the burden of excessive rates for certain utility services but that the State is without power to protect the public against the dangers incident to interruption and curtailment of those same services—that the State may protect the few who may not be able to afford higher rates but may not protect the many against a total loss of service.

In *West Virginia State Board* v. *Barnette*, 319 U. S. 624, 639 (1943), Mr. Justice JACKSON said for this Court:

> "The right of the State to regulate, for example, a public utility may well include, so far as the due process clause is concerned, power to impose all

> of the restrictions which a legislature may have a 'rational basis for adopting.' "

It is respectfully submitted that the regulation of the contract of employment between a utility company furnishing essential services and its employees for the purpose of assuring a continuance of the flow of essential services is a reasonable exercise of the police power. A state legislature faced with the dangers attendant upon interruptions in such services certainly has a "rational basis for adopting" such regulatory measures.

b) All other constitutional guaranties are subject to restraint where such restraint is essential to the common good.

In their eagerness to continue to resort to what Mr. Justice FRANKFURTER has seen fit to describe as "the more primitive method of trial by combat" (*American Federation of Labor* v. *American Sash & Door*, 335 U. S. 538, 544 (1948), opponents of this remedial legislation have sought to treat the matter as if it were not a simple contract problem, but one involving the so-called personal guaranties. But personal rights are not absolutes.

This Court said in *Near* v. *Minnesota*, 283 U. S. 697, 708 (1930):

> "Liberty of speech and of the press is also not an absolute right, and the state may punish its abuse."

In *Carpenters & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722, 725 (1941), it was said for the Court:

> "* * * But the circumstances that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the state to

> impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain. Whenever state action is challenged as a denial of 'liberty', the question always is whether the state has violated 'the essential attributes of that liberty'. Mr. Chief Justice HUGHES in *Near* v. *Minnesota,* 283 U. S. 697, 708, 51 S. Ct. 625, 628, 75 L. Ed. 1357. While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause, that Clause postulates the authority of the states to translate into law local policies 'to promote the health, safety, morals, and general welfare of its people * * *. The limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise.' 283 U. S. at page 707, 51 S. Ct. at page 628, 75 L. Ed. 1357. 'The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side.' ''

The State respectfully submits that all constitutional guaranties of both employer and employee must yield to the paramount needs of the public. It must be so if we will exist for as was said by this Court in *Cox* v. *New Hampshire,* 312 U. S. 569, 575 (1941):

> "Civil liberties, as guaranteed by the Constitution imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."

c) There is no provision of the federal law which gives to the several States the protection intended by the regulatory legislation in question.

Whether the Federal Government would be authorized to enact legislation designed to assure to the States a continuance of essential intrastate public utility services or whether the State alone has that power under the Ninth

and Tenth Amendments, we need not now determine. It is sufficient to say that the Federal Government has not attempted to do so.

In *Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Company*, 335 U. S. 525, 536 (1948), this Court said:

> "This Court beginning at least as early as 1934, when the Nebbia case was decided, has steadily rejected the due process philosophy enunciated in the Adair-Coppage line of cases. In doing so it has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law. * * * Under this constitutional doctrine the due process clause is no longer to be so broadly construed that the Congress and state legislatures are put in a strait jacket when they attempt to suppress business and industrial conditions which they regard as offensive to the public welfare."

In *Skiriotes* v. *Florida*, 313 U. S. 69, 75 (1940), it was said:

> "According to familiar principles, Congress having occupied but a limited field, the authority of the State to protect its interests by additional or supplementary legislation otherwise valid is not impaired."

This was said with respect to the sponge industry at best but a small portion of the economy of the State of Florida. The legislation under review in the instant case deals with the welfare of all the people of the several States enacting such legislation.

In *People of the State of California* v. *Thompson*, 313 U. S. 109, 115 (1940), this Court recognized the power in the States under certain circumstances to regulate even interstate commerce saying:

> "It has uniformly held that in the absence of pertinent Congressional legislation there is constitutional power in the states to regulate interstate commerce by motor vehicle wherever it affects the safety of the public or the safety and convenient use of its highways, provided only that the regulation does not in any other respect unnecessarily obstruct interstate commerce."

The State of New Jersey respectfully submits that Congress has not sought to make provision for protection to the States against the dangers incident to interruption and curtailment of essential utility services and the right of the States to make reasonable regulations to attain such end remains unimpaired.

In conclusion of this point the State of New Jersey respectfully maintains that a State may adopt reasonable regulations designed to assure to its people a continuance of the flow of essential intrastate public utility services furnished under governmental franchises of such State.

POINT II

As a necessary incident to a State's power to assure a continuance of the flow of essential public utility services, a State may prohibit strikes in public utility plants which would cause an interruption or curtailment of such essential services.

In sustaining the authority of a State to adopt regulatory legislation designed to prevent work stoppages in public utilities, the New Jersey Supreme Court spoke of the imminent danger of a cessation or curtailment of such services as being "the occurrence of any such catastrophe." *Van Riper* v. *Traffic Tel. Workers Federation, supra.* The State of New Jersey respectfully submits that every threat

of a work stoppage in plants furnishing essential services constitutes a threat to the welfare of all of the people affected. The State having the authority under the police power to assure a continuance of essential services, it should necessarily follow that the State may lawfully prohibit any strike which will cause an interruption or curtailment of such services.

Each State must determine just how it will meet any threat. It is respectfully submitted that this Court, having determined that the State may regulate concerning the adequacy of the supply of the service, should, in order to strike that nice balance which should exist between the national and state authority in this most sensitive area of government, hold that it is the right of the States to determine the propriety of specific regulations, designed to achieve such purpose.

For the information of this Court, the State of New Jersey has met the problem by forbidding strikes in public utilities only after a finding by the Governor that

> "the public interest, health and welfare are jeopardized, and that the exercise of such authority is necessary to insure the operation of such public utility." N. J. S. A. 34:13B-13; App. page vi.

While it would appear that the New Jersey Legislature intended the compulsory arbitration provision to provide some measure of substitution for the right to strike, nevertheless the two need not be read together. It is conceivable that this Court, while holding that the State is authorized to forbid interruption or curtailment of essential utility services including the prohibition of strikes in intrastate service, could hold that any labor disputes, even though but indirectly affecting interstate commerce, must be settled under the Federal jurisdiction. The State therefore respectfully submits that the second question to be determined is whether the State has the authority to pro-

hibit strikes which would cause an interruption or curtailment of essential public utility services.

New Jersey is convinced that no one can reasonably maintain that a requirement that an individual contract of employment contain an implied condition that there be no strike, lockout or work stoppage would in any wise obstruct, hamper or interfere with interstate commerce. Also all of such individual contracts of employment would appear to be purely intrastate transactions notwithstanding such individual contracts were negotiated through a national union as bargaining agent. Because, however, of the holding by this Court that certain relationships, which would appear at first blush to be wholly intrastate, are subject to federal legislation because of an indirect effect upon interstate commerce, the question of the applicability of federal legislation is brought in question.

The New Jersey Supreme Court in *Van Riper* v. *Traffic Tel. Workers Federation, supra,* pointed out at page 347 that this Court had in two recent cases reaffirmed the protection which the Federal Constitution affords to state statutes designed to protect the legitimate interests of the State in industrial disputes, citing *Giboney* v. *Empire Storage & Ice Co.,* 336 U. S. 490 (1949) and *Lincoln Federal Labor Union* v. *Northwestern Iron & Metal Co.,* 335 U. S. 525 (1949). That Court also called attention to *International Union U. A. W., A. F. L.* v. *Wisconsin Employment Relations Board,* 336 U. S. 245, 259, wherein it was said:

> "The right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' and which, as the Court has pointed out, was recognized as such in its decisions long before it was given protection by the Labor Relations Act. *National Labor Relations Bd.* v. *Jones & L.*

Steel Corp., 301 U. S. 1, 33, 81 L. Ed. 893, 909, 57 S. Ct. 615, 108 A. L. R. 1352."

It was the conclusion of the New Jersey Court that the interests protected by the legislation there under review are far more vital to the welfare of the public than those which were dealt with by this Court in the three cases cited.

This Court in the *International Union* case said (p. 353) that the intention to exclude the States from exercising their police power must be clearly manifested. Not only is there no clear manifestation in the instant case but on the contrary, to sustain the contention that Congress by the enactment of the Labor Management Relations Act intended to preempt the field with respect to strikes in public utilities, one must first find that, not only did the Federal Government fail to provide relief to States and their subdivisions in case of a breakdown in essential utility services, because of labor disputes, but, further, that the Federal Government deliberately contrived to deprive the States of the power to help themselves in a matter so vital to the health, welfare and safety of the people. To state the proposition is to answer it. It is unthinkable that Congress could ever have had any such intention. Congress provided for emergencies at the national level only and failed to provide for statewide and local emergencies because it considered the States better equipped to deal with such local emergencies.

New Jersey believes that, since the legislation in question is primarily concerned with the assertion of authority by a State under its police power to assure its people a continuance of service, the right to prohibit strikes in order to attain that lawful end cannot involve any conflict with federal legislation.

The New Jersey Supreme Court dealt at length with the contention that this type of legislation is invalid be-

cause it invades a field preempted by the Federal Government in the *Van Riper* case (p. 351), saying:

"The defendant union contends that the legislation is invalid in that it invades a field which has been pre-empted by the federal government through the enactment of the National Labor Relations Act and the Labor Management Relations Act. Here the basic rule is that the 'intention of Congress to exclude the states from exerting their police power must be clearly manifested.' *Allen Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154 (1942). The contention in the present case would seem to be disposed of by the decision hereinbefore referred to of the United States Supreme Court in *International Union U.A.W., A.F. of L.* v. *Wisconsin Employment Relations Board*, decided February 28, 1949, 93 L. Ed. (ad. ops.) 510, 518-519, where, in speaking of the effect of the National Labor Relations Act and of the Labor Management Relations Act upon the power of the states to legislate, the court said:

"'This Court less than a decade earlier had stated that law to be that the state constitutionally could prohibit strikes and make a violation criminal. It had unanimously adopted the language of Mr. Justice BRANDEIS that 'Neither the common law, nor the Fourteenth Amendment confers the absolute right to strike.' *Dorchy* v. *Kansas*, 272 U. S. 306, 311. Dissenting views most favorable to labor in other cases had conceded the right of the state legislature to mark the limits of tolerable industrial conflict in the public interest. *Duplex Co.* v. *Deering*, 254 U. S. 443, 488. This court has adhered to that view. *Thornhill* v. *Alabama*, 310 U. S. 88, 103. The right to strike because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' and which, as the Court has pointed out, was recog-

nized as such in its decisions long before it was given protection by the Labor Relations Act. *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 33.

'As to the right to strike, however, this Court, quoting the language of sec. 13, has said, 306 U. S. 240, 256, "but this recognition of 'the right to strike' plainly contemplates a lawful strike,—the exercise of the unquestioned right to quit work,' and it did not operate to legalize the sit-down strike, which state law made illegal and state authorities punished. *Labor Board* v. *Fansteel Corp.*, 306 U. S. 240. Nor, for example did it make legal a strike that run afoul of federal law, *Southern S.S. Co.* v. *Labor Board*, 316 U. S. 31; nor one in violation of a contract made pursuant thereto, *Labor Board* v. *Sands Mfg. Co.*, 306 U. S. 332; nor one creating a national emergency, *United States* v. *United Mine Workers*, 330 U. S. 258.'

Thus the power still resides in the states in a proper case to prohibit strikes notwithstanding the existing federal legislation."

Subsequent to the determination in the *Van Riper* case, the matter was again before the New Jersey Courts, the contention being made that *International Union U.A.W. & A. V. O'Brien*, decided May 8, 1950, 94 L. Ed. (ad. ops.) 659, 339 U. S. 454, is authority for the contention that a State may not enact such legislation. The New Jersey Supreme Court in disposing of this contention in *New Jersey Bell Telephone Co.* v. *Communication Workers*, 5 N. J. 354, 366 (Sup. Ct., 1950), said:

"Our analysis of the *O'Brien* case, *supra*, does not lead us to the same conclusion. In that case the constitutionality of the strike vote provision of the Michigan labor mediation law was questioned. The Union had struck against a private industrial organization, engaged in interstate commerce, without conforming to the prescribed state procedure; the state procedure differed from that provided in the

federal legislation and the court decided that because of the conflict the state statute was unconstitutional. The court said that the regulation of the right to peacefully strike for higher wages had been pre-empted by Congress, but the case being decided by the court involved a statute regulating the right to strike against private industry. It was not a statute such as the New Jersey statute, in which a state, in the exercise of its sovereignty, seeks to maintain without interruption the supply of services, considered essential to the welfare and health of its people, being furnished by a public utility, operating under a franchise by the state, whose services furnished are primarily intrastate. It is significant that in the *O'Brien* case, *supra*, the court said, 'Even if some state legislation in this area could be sustained, the particular statute before us could not stand. For it conflicts with the Federal Act.' Our examination of the Federal Act discloses no provision therein which prohibits a state, in the exercise of its police power, from protecting itself against strikes or lockouts in public utilities which would imperil the health and safety of its citizens. It is noted that the Labor-Management Relations Act, 1947, in sections 206-210, authorizes the Federal Government to proceed, pursuant thereto, to enjoin threatened strikes or lockouts which, if permitted to occur, might imperil the national health or safety. We find no authority in the Federal Act for the Federal Government to so act to prevent similar emergencies which may be state-wide only and which may be of insufficient magnitude to imperil the national health and safety. Since we find no provision in the Federal Act prohibiting a state from enjoining threatened strikes or lockouts in public utilities which, if permitted to occur, might imperil the health, welfare and safety of its people in an emergency of state-wide proportions only, since the Federal Act does not authorize the Federal Government to act in such cases, and since the 'intention of Congress to exclude states from exerting their police power must be clearly manifested,' *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 86 L. Ed.

1154 (1942), we conclude that the right of the states to prohibit strikes or lockouts in this sphere has not been pre-empted by Congress, and that the *O'Brien* case, *supra*, is inapplicable to the present situation.

"We reiterate the statement made in the *Van Riper* case, *supra*, that 'Thus the power still resides in the states in a proper case to prohibit strikes notwithstanding the existing federal legislation.' We consider this a 'proper case' within the foregoing statement and find nothing in the *O'Brien* case, *supra*, of a dissuasive nature."

In *Parker* v. *Brown*, 317 U. S. 341, 360 (1942), this Court pointed out that it has been repeatedly held that the grant of power by the commerce clause did not wholly withdraw from the states the authority to regulate the commerce in matters of purely local concern.

In *N. L. R. B.* v. *Jones & Laughlin Steel Corporation*, *supra*, this Court said (p. 30):

"The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction which the commerce clause itself establishes between commerce 'among the several States' and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system."

In *California* v. *Thompson*, 313 U. S. 109, 113 (1940) this Court recognized

"that there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce, but which, because of their local character and their number and diversity may never be adequately dealt with by Congress."

In *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 499 (1949) this Court repeatedly emphasized that "it was

the province of the state 'to set the limits of permissible contest open to industrial combatant,'" saying

> "Further emphasizing the power of a state 'to set the limits of permissible contest open to industrial combatants' the Court cited with approval the opinion of Mr. Justice BRANDEIS in Duplex Printing Co. v. Deering, 254 U. S. 443, at page 488, 41 S. Ct. 172, at page 184, 65 L. Ed. 349, 16 A. L. R. 196. On that page the opinion stated:
>
> > 'The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands. This is the function of the legislature which, while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat.'"

These rules would be meaningless if a State may not protect itself under the facts of the instant case.

The State again emphasizes that we are here concerned not with the usual dispute between employer and employee but rather with the effect upon an outsider, the public, of such dispute. It is significant that in the *O'Brien* case this Court pointed out that the Union involved was the bargaining agent in plants in California, Indiana and Michigan. The Court was obviously impressed with the interstate aspect of the Union activities in the case. And in the light of some clearly demonstrated public need, which would justify the exercise of the police power, there can be no complaint against the determination made in that case since the Court in the *O'Brien* case was dealing with a statute having for its primary concern the control of labor relations. As the State will show hereafter, the *O'Brien* case and *LaCrosse Telephone Corp.* v. *Wisconsin*

Labor Relations Board, 336 U. S. 18 (1949), can be distinguished by the fact that (1) the public need was not demonstrated in those cases and (2) the Court was primarily concerned with Union activities and not with the individual contracts of employment. Congress can freely legislate concerning such Union activities without in anywise encroaching upon the power of a State to guaranty to its people a continuance of essential utility service. In this connection, the State also points out that in their brief, the Petitioners have repeatedly emphasized the right of "traditional peaceful strike". The State respectfully submits that there can be no peaceful strike against the welfare of the people.

The State of New Jersey respectfully submits that a State has the authority to limit strikes in public utilities furnishing essential services whenever any such strike would result in an interruption or curtailment of such essential services.

POINT III

As an incident to the regulation of public utilities to assure a continuance of service, a State is authorized to provide for compulsory arbitration of labor disputes involving the contract rights of individual employees in cases where the employers and employees in such utilities have been denied the right of strike and lockout.

It having been determined that a State does have the authority under its police power to make regulations designed to prevent a work stoppage in public utilities furnishing essential services and that as an incident of such authority the State may limit the right to strike, it now becomes necessary to determine whether the State may compel the parties to the labor dispute to submit to compulsory arbitration. The State respectfully submits that

for the first time the question of the invasion of a field preempted by federal legislation comes into the case. As was suggested above, it is conceivable that having determined both other questions in favor of the State, this Court could deny the power in the State to compel compulsory arbitration. The State earnestly submits that this Court should not so find because as a necessary part of State regulatory legislation, the State should be permitted to provide a forum where the wages, hours of employment, and the working conditions of the individual employees may be fixed in case of dispute. The State will deal with Union activities under the next point.

The State believes that it has been demonstrated that there is no authority which denies to a State the power to assure to its people a continuance of essential utility services. But can an adequate result be accomplished while at the same time having all labor disputes determined by collective bargaining under the Federal Act? New Jersey respectfully suggests that it could not.

It has been said that, when the subject lies within the police power of the State, "debatable questions as to reasonableness are not for the Courts but for the legislature, which is entitled to form its own judgment," *Sproles* v. *Binford*, 286 U. S. 374 (1932); and that the range of the State's discretion in promoting the security and well-being of the public "accords with the subject of its exercise," *Stirling* v. *Constantin*, 287 U. S. 378 (1932); and that where the end is one to which legislative power may properly be directed, it is enough "if it can be seen that in any degree, or under any reasonably conceivable circumstances, there is an actual relation between the means and the end," *Stephenson* v. *Binford*, 287 U. S. 251 (1932). Let us examine the instant situation in the light of such rules.

Let us suppose that this Court had held that a State was authorized to prohibit strikes and lockouts in public utility plants and that thereafter a labor dispute arose.

If that dispute concerned an increase in wages, the Company with its employees unable to strike could wilfully stall negotiations. If the dispute concerned a decrease in wages, the employees with the Company unable to engage in a lockout, could wilfully stall the negotiations. Nor need it necessarily be wilful. The respective parties, sincerely believing in the merits of their own positions, could refuse to budge. We need only to examine the facts of known cases to realize the difficulty. The only real protection which the parties would have, in the event that the State can prevent a strike or lockout, is some procedure similar to that which has been set up by the several state statutes. The provisions of the Federal legislation would be manifestly insufficient.

It should be pointed out that, under the New Jersey statute, it is provided that sixty days notice must be given of the intention to engage in a strike, work stoppage or lockout. N. J. S. A. 34:13B-18; App. page viii. The statute provides that during the sixty day period, it shall be the duty of the parties to endeavor to reach an agreement by collective bargaining.

There is nothing in the statute which prevents the two parties from availing themselves of the facilities of the National Labor Relations Board during this cooling off period. Only if there is a final breakdown of negotiations and only if the Governor finds that a strike, work stoppage or lockout will result in failure to continue the operations of a public utility and threatens the public interest, health and welfare do the seizure and compulsory arbitration provisions of the law come into operation. N. J. S. A. 34:13B-13 *et seq.*; App. page v. It must be obvious that New Jersey by the enactment of compulsory arbitration provisions as an incident to a plan to assure a continuance of essential utility services was not in anywise concerned with the regulation of interstate commerce.

And so with the other States. Those several States by the adoption of statutes similar to the statute under consideration do not pretend to regulate interstate commerce in any respect. It may not reasonably be said that the said statutes do constitute an interference with such commerce. In fact it can be fairly said that the statutes do not seek to interfere in any respect with service furnished in either interstate or intrastate commerce. The sole purpose behind the enactment of the statutes was to assure to the people of the several States that the regular everyday supply of essential utility services would be maintained. If, incidentally, some interstate service which would otherwise be discontinued is likewise maintained, can that by any stretch of the imagination be said to be an interference with interstate commerce? The Petitioners state at page 7 of brief in No. 329 that any interruption of business by a labor dispute would affect interstate commerce. They reason that this gives the federal authorities jurisdiction and deprives the State of the power to prevent just such interruption. They reason that an instrument designed to protect the public may now be used to destroy that public. This Court easily disposed of such illogical argument in *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Company, supra* (p. 537).

a) Concerning the Applicability of the Commerce Clause.

In *Parker* v. *Brown, supra,* this Court said that the principal object sought to be accomplished by the Commerce Clause was the prevention of the impairment to or obstruction of the free flow of commerce. There is no such interference, impairment or obstruction in the instant case. In *Denver & R. G. R. R. Co.* v. *Denver,* 250 U. S. 241, 246 (1918), the Court said:

> "The objection that the ordinance offends against the commerce clause of the Constitution is not tenable. The ordinance makes no discrimination

against interstate commerce, will not impede its movement in regular course, and will affect it only incidentally and indirectly."

In *South Covington Ry. Co.* v. *Covington*, 235 U. S. 537, 546 (1914), the Court said:

> "In the light of these cases, and upon principle, the conclusion is reached that it is competent for the State to provide for local improvements or facilities, or to adopt reasonable measures in the interest of the health, safety and welfare of the people, notwithstanding such regulations might incidentally and indirectly involve interstate commerce. Summing up the matter, it is there stated (p. 402):
>
> > 'Our system of government is a practical adjustment by which the National Authority as conferred by the Constitution is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the State appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such case, Congress must be the judge of the necessity of Federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and, for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our constitutional system has thus been made possible.' "

In *Erie R. R. Co.* v. *Public Utility Comm.*, 254 U. S. 394, 410 (1921), there is shown the extent to which this Court will go to protect the State in its power to guard the safety of its people in a case where Congress has not acted specifically to deprive the State of such power, notwithstanding

a claimed interference with interstate commerce. See also *California* v. *Thompson*, 313 U. S. 109, 115.

In *Terminal Association* v. *Trainmen*, 318 U. S. 1, 8 (1943), it was said:

> "If lack of facilities at the state line requires as a practical matter that in order to provide cabooses in Illinois appellant must also provide them for some distance in Missouri, that fact does not preclude Illinois from regulating the operation to the limits of its territory. *Missouri Pac. R. Co.* v. *State of Kansas*, 216 U. S. 262, 30 S. Ct. 330, 54 L. Ed. 472; cf, *South Covington & C. St. Ry. Co.* v. *City of Covington*, 235 U. S. 537, 35 S. Ct. 158, 59 L. Ed. 350, L. R. A. 1915F, 792."

It is interesting to note that the Court cited the *South Covington Railroad Company* case as its authority.

The effect of such decisions have not been altered by *Southern Pacific* v. *Arizona*, 325 U. S. 761 (1945) wherein the Court held that, notwithstanding that Congress has not acted on the subject, the commerce clause does give protection from State legislation inimical to the national commerce and that the United States Supreme Court is the arbiter of the competing demands of the State and National interests. That case simply holds that the needs of the State must be real and must not unduly oppress interstate commerce. New Jersey respectfully urges that it may not reasonably be said that the State has interfered with or restricted interstate commerce in any manner in the instant case nor that the State has done anything not necessary to effectuate the lawful aims of the State on behalf of its people.

In *Parker* v. *Brown*, *supra*, 317 U. S. 341, 361, this Court said in sustaining a local regulation concerning food against the claim that such regulation was in conflict with the commerce clause and with the Agricultural Marketing Agreement Act:

> "And such regulations of manufacture have been sustained where, aimed at matters of local concern, they had the effect of preventing commerce in the regulated article. * * * *Sligh* v. *Kirkwood*, 237 U. S. 52; * * *."

And again at page 367:

> "The effect on the commerce is not greater, and in some instances was far less, than that which this Court has held not to afford a basis for denying to the states the right to pursue a legitimate state end. * * * *Sligh* v. *Kirkwood, supra*."

Unless it may be clearly shown that the Congress intended to withdraw from the States the power to regulate the terms of employment of persons engaged in furnishing an intrastate service declared by the Legislature to be a "life essential", even though such regulation be necessary to assure a continuance of such service, it must be held that the power does exist in the State to regulate such employment regardless of the fact that some portion of the business of the Company is interstate.

To accomplish a lawful purpose, the State has made a regulation which provides that any person wishing to work in an essential public utility service must to a limited extent forego his right to bargain in a certain way. In place of his prior right, a method is provided whereby his contract problems can be determined by resorting to a statutory procedure at law instead of "the primitive method of trial by combat." In this connection, it must be remembered that such public utility employees hold very favored positions. They are employed by a monopoly which is regulated by law but which by the same law is assured a fair return upon investment after all wages have been paid. Protected by contracts that has been consummated because of liberal labor laws, they have attained certain tenure and pension rights. Theirs not the worry of the ordinary industrial worker.

The public utility employees have chosen such calling voluntarily because of the benefits it affords. The States now ask that as a condition of such employment, the public be assured that there be no cessation in the furnishing of the services provided by their employer under state franchise by reason of any dispute concerning wages, hours or conditions of employment of the individual employees.

The State respectfully submits that no violence will be done to our concept of the proper working of our federal scheme of government if it should be held that, notwithstanding that the National Labor Relations Board may ordinarily have jurisdiction to determine labor disputes involving employees of public utilities furnishing essential intrastate services under State franchises, the States do have concurrent jurisdiction to the extent needed to assure the satisfactory working of regulations designed to protect the public from the dangers which would accompany an interruption or curtailment of the supply of such services. The State respectfully urges that, since the Federal Government has not provided satisfactory relief for the people of the several States in the event of a cessation in the supply of such services, the States are authorized to make necessary regulations and that as an incident to the right to prohibit strikes, which would cause an interference with the supply of services, may provide for compulsory arbitration of certain labor disputes.

POINT IV

Concerning the Activities of the Unions

The State has made a distinction between compulsory arbitration of disputes directly affecting the individual employee such as hours, wages and the conditions surrounding the work of those employees and disputes affecting a Union as a separate entity, such as a demand for a union

shop. The New Jersey Supreme Court said in *New Jersey Bell Telephone Co.* v. *Communication Workers, supra* (p. 369), that the New Jersey statute properly construed did not give a board of arbitration jurisdiction to award union security. This construction by New Jersey's highest court is conclusive on such point. *Kovacs* v. *Cooper,* 336 U. S. 77 (1949). The New Jersey Court said that any such jurisdiction would have been in conflict with the letter and spirit of the Federal Act which premises the question of union security upon collective bargaining and not compulsion.

There was nothing inconsistent in such holding. The individual employees actually carry on the work necessary to maintain the flow of essential utility services. Not so the Union. It is not employed by the public utility company. Any suggestion to the contrary would bring down the wrath of the National Labor Relations Board as in *National Labor Relations Board* v. *Baltimore Transit Co., supra.* Therefore, while it is highly essential that a ready means be provided for the settlement of labor disputes concerning the wages, hours and conditions of employment of the individuals who perform the work, there is not present the same necessity with respect to the bargaining agent, who represents the employees and has no connection with the company.

This Court has repeatedly recognized that the Union and its members are not one and the same thing. *Steele* v. *L. & N. R. R. Co.,* 323 U. S. 198 (1944); *Tunstall* v. *Brotherhood,* 323 U. S. 192 (1944); *United States* v. *White,* 322 U. S. 694 (1944); *American Communications Ass'n* v. *Douds,* 70 S. Ct. 674, decided May 8th, 1950.

Nor is there any inconsistency in having the necessary employee disputes resolved in a statutory state tribunal in lieu of a right to strike while leaving matters of union security to the operation of the federal legislation. This

is far short of the situation presented by *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Company*, 335 U. S. 525 (1948) and *American Federation of Labor* v. *American Sash & Door Co.*, 335 U. S. 538 (1948) wherein a North Carolina statute and constitutional amendments of Nebraska and Arizona, which in effect prohibit or restrict closed shop contracts, were upheld.

The State has called attention to this distinction because it does much to explain and distinguish *La Crosse Telephone Corporation* v. *Wisconsin Employment Relations Board*, 336 U. S. 18 (1949) and *International Union of U. A. A. & A.* v. *O'Brien*, 339 U. S. 454 (1950). In the former case the question at issue was the power of the State to provide a tribunal for determining which union was to be the bargaining agent—a matter with which the consumer public could not be particularly concerned. In the *O'Brien* case it was pointed out that the Union in question was the bargaining agent in California, Indiana and Michigan. The activities of the Union itself were interstate in character. In the absence of any compelling local need it was natural that the interstate nature of the Union activities should be uppermost in the thoughts of the Court. The State respectfully submits that these two cases cannot be controlling in the instant case because (1) we are not here concerned with the determination of a usual labor dispute between an employer and its employees but with a dispute which if left unregulated may cause incalculable harm to the people as a whole and (2) because no federal law has been enacted which seeks to guard the people against such harm.

The construction placed upon the New Jersey statutes by the Supreme Court of New Jersey is just one more indication that no violence will be done to our Federal scheme of government by permitting the National Labor Relations Act and the Labor Management Relations Act on

the one hand and the State regulatory acts on the other to stand together. The Federal and State laws can be read together to give the public the maximum desired relief. It is respectfully submitted that this conclusion of the State is in keeping with the reasoning of Mr. Justice FRANKFURTER who said in *Palmer* v. *Massachusetts*, 308 U. S. 79, 83 (1939):

> "Especially is wariness enjoined when the problem of construction implicates one of the recurring phases of our federalism and involves striking a balance between national and state authority in one of the most sensitive areas of government."

Such balance cannot be struck if a State is denied the power to protect its people against the catastrophe of a crippling strike in an intrastate public utility.

CONCLUSION

The State of New Jersey respectfully suggests that the issues in the instant causes will permit this Honorable Court to hold that

(1) Notwithstanding that the National Labor Relations Board may have jurisdiction to determine certain labor disputes in public utilities furnishing essential intrastate services, a State may make reasonable regulations under its police power designed to assure to its people a continuance of the supply of such essential intrastate services and calculated to avoid the dangers that would be attendant upon a stoppage of such services.

(2) As a necessary incident to the power to make such regulations, a State may prohibit any strike in a public utility furnishing such essential intrastate services, where such strike will cause an interruption in or curtailment of such services or threatens to cause such interruption or curtailment of services.

(3) Where a State prohibits strikes and lockouts in public utilities furnishing essential intrastate services in order to assure a continuance in the supply of such services, the State is authorized to provide for compulsory arbitration of a labor dispute, which caused the threat of a strike or lockout, until such time as adequate relief is afforded at the Federal level.

Respectfully submitted,

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APPENDIX

New Jersey Statutes Annotated

(Chapter 13B. Labor Disputes in Public Utilities)

34:13B-1. Declaration of Policy

It is hereby declared to be the policy of the State that heat, light, power, sanitation, transportation, communication and water are life essentials of the people; that the possibility of labor strife in utilities operating under governmental franchise is a threat to the welfare and health of the people; that utilities operating under such franchise are clothed with public interest, and the State's regulation of the labor relations affecting such public utilities is necessary in the public interest.

It is further declared to be the policy of this State that after the taking of possession of any public utility by the State pursuant to the provisions of section thirteen hereof,[1] such public utility shall become for purposes of production and operation a State facility and the use and operation thereof by the State in the public interest shall be considered a governmental function of the State of New Jersey. L.1946, c. 38, p. 87, § 1, as amended L.1947, c. 75, p. 447, § 3.

* * *

34:13B-2. Collective Bargaining

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this act.[1] No public utility, its officers or agents, shall deny or in any way question the right of its employees to join, organize or assist in organizing the labor organization of their choice, and it

shall be unlawful for any public utility to interfere in any way with the organization of its employees, or to use the funds of the public utility in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization; *provided, however,* that it shall not be unlawful to require as a condition of employment, membership in any labor organization, not initiated, created or existing as a result of practices declared unlawful hereby; *provided,* that nothing in this act shall be construed to prohibit a public utility from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a public utility from furnishing free transportation to its employees while engaged in the business of a labor organization. In the event of a controversy as to who are the representatives of any given craft or class of employees of a utility for the purpose of collective bargaining or of a controversy as to which employees of a utility constitute or are members of a given class and entitled to vote in an election for the choice of representatives for purposes of collective bargaining, the State Board of Mediation shall determine such question or questions and certify its findings to the employees and to the utility. Such finding of the State Board of Mediation shall be conclusive. L.1946, c. 38, p. 87, § 2.

* * *

34:13B-3. Additional Powers to State Board of Mediation

There is hereby included in the functions of the State Board of Mediation the following responsibility:

(A) The determination of who are the representatives of any given craft or class of employees of a utility; which

employees of a utility constitute or are members of a given craft or class and entitled to vote in an election for choice of representatives of such craft or class for purposes of collective bargaining. It shall be the duty of the State Board of Mediation to recognize as an appropriate bargaining unit, any craft, group, or class of employees of a utility, the majority of whom desire to be represented as such class, craft or group. L.1946, c. 38, p. 88, § 3.

34:13B-4. Contracts Between a Utility and its Employees

All labor agreements hereafter entered into between the management of a utility and its employees or any craft or class of employees shall be reduced to writing and continue for a period of not less than one year from the date of the expiration of the previous agreement entered into between the management of the utility and its employees or if there has been no such previous agreement then for a period of not less than one year from the date of the actual execution of the agreement. Such agreement shall be presumed to continue in force and effect from year to year after the date fixed for its original termination unless either or both parties thereto inform the other, in writing, of the specific changes desired to be made therein and shall also file a copy of such demands with the State Board of Mediation, at least sixty days before the original termination date or sixty days before the end of any yearly renewal period. L.1946, c. 38, p. 89, § 4.

34:13B-5. Written Notice of Changes Desired in Existing Labor Contracts Required

In the case of all existing labor contracts, agreements or understandings which do not provide for at least a sixty-day notice of desired changes and which contracts, agreements or understandings terminate after seventy days following the effective date of this act,[1] the parties thereto shall nevertheless inform, in writing, the other party or

parties of any specific changes desired to be made in said contract, agreement or understanding and file a copy of such desired changes with the State Board of Mediation at least sixty days before the date fixed for the termination of said contract, agreement or understanding. In the case of labor contracts, agreements or understandings terminating within seventy days after this act shall become effective, the parties thereto shall forthwith, or not later than ten days after the effective date of this act, inform the other party, in writing, of the specific changes desired to be made in said contract, agreement or understanding and promptly file a copy of such demands with the State Board of Mediation. L.1946, c. 38, p. 89, § 5.

* * *

34:13B-6. Expired Labor Contracts; Written Notice of Desired Changes Required

Whenever at the time of the passage of this act a labor contract between a utility and its employees has existed and has expired, and where services are still being performed by the said employees under the terms of said expired contract, the said employees, through their duly elected representatives, if they desire to enter into a contract with the utility or if they desire to seek changes in the terms of wages, hours or working conditions, or if the utility shall desire in any way to effect the terms of wages, working conditions, et cetera, under which employment is now being carried on then and in that case the party desiring such changes shall within ten days after the effective date of this act inform the other party in writing of the specific changes desired to be made in said terms of employment either by contract, in writing, or otherwise, and shall promptly file a copy of such demands with the State Board of Mediation. L.1946, c. 38, p. 90, § 6.

34:13B-7. Change in Terms of Employment Not the Subject of Contract; Notice of Changes Desired

Whenever, after the passage of this act,[1] a situation exists in any utility whereby employees are rendering services under terms and conditions which were not at the time of the passage of this act and which have not heretofore been the subject of the contract, and said employees desire to effectuate a change in the terms of employment or a utility desires to effectuate a change in said terms of employment then and in that event, it shall be the duty of the party desiring such change, not less than sixty days prior to the desired effective date thereof, to inform the other party in writing of the specific changes so desired in the manner in which they are desired, either by written contract or otherwise and to file a copy of such terms with the State Board of Mediation. L.1945, c. 38, p. 90, § 7.

* * *

34:13B-13. Seizure

Should either party in a labor dispute between a utility and its employees, after having given sixty days' notice thereof, or failing to give such notice, engage in any strike, work stoppage or lockout which, in the opinion of the Governor, will result in the failure to continue the operation of the public utility, and threatens the public interest, health and welfare, or in the event that neither side has given notice to the other of an intention to seek a change in working conditions, and there occurs a lockout, strike or work stoppage, which, in the opinion of the Governor threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare, then and in that case he is authorized to take immediate possession of the plant, equipment or facility for the use and operation by the State of New Jersey in the public interest. Such power and authority may be exercised by the Governor through such department or agency of the government as

he may designate and may be exercised after his investigation and proclamation that there is a threatened or actual interruption of the operation of such public utility as the result of a labor dispute, a threatened or actual strike, a lockout or other labor disturbance, and that the public interest, health and welfare are jeopardized, and that the exercise of such authority is necessary to insure the operation of such public utility; *provided,* that whenever such public utility, its plant, equipment or facility has been or is hereafter so taken by reason of a strike, lockout, threatened strike, threatened lockout, work stoppage or slowdown, or other cause, such utility, plant, equipment or facility shall be returned to the owners thereof as soon as practicable after the settlement of said labor dispute. L.1946, c. 38, p. 93, § 13, as amended L.1950, c. 14, p. —, § 1.

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34:13B-14. General

The Governor is authorized to prescribe the necessary rules and regulations to carry out the provisions of this act.[1] L.1946, c. 38, p. 94, § 14.

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34:13B-15. Labor not to be Required Without Employee's Consent

Under no circumstances shall any employee be required to render, perform or engage in any work, labor or service without his consent; nor shall anything in this act,[2] or in any amendment thereof or supplement thereto, be construed to make the quitting of his work, labor or services by an individual employee an illegal or prohibited act; nor shall any court issue any process to compel the performance by an individual employee of such work, labor or service without his consent. L.1946, c. 38, p. 94, § 15, as amended L.1947, c. 75, p. 451, § 9.

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34:13B-16. DEFINITIONS

(a) The term "public utility" shall include autobusses; bridge companies; canal companies; electric light, heat and power companies; ferries and steamboats; gas companies; pipeline companies, railroads; sewer companies; steam and water power companies; street railways; telegraph and telephone companies; tunnel companies; water companies.

(b) The term "person" means any individual, firm, copartnership, corporation, company, association, or joint stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

(c) The term "representative" means any person or persons, labor union, organization, or corporation designated either by a utility or group of utilities or by its or their employees to act or do for them.

(d) The term "collective bargaining" shall be understood to embody the philosophy of bargaining by employees through representatives of their own choosing, and shall include the right of representatives of employees' units to be consulted and to bargain upon the exceptional as well as the routine wages, hours, rules, and working conditions.

(e) The term "labor dispute" shall involve any controversy between employer and employees as to hours, wages, and working conditions. The fact that employees have amicable relations with their employers shall not preclude the existence of a dispute among them concerning their representative for collective bargaining purposes.

(f) The term "employee" shall refer to anyone in the service of another, actually engaged in or connected with the operation of any public utility throughout the State. L.1946, c. 38, p. 94, § 16.

34:13B-17. Severability

If any clause, sentence, paragraph or part of this act,[1] or of any supplement thereto or amendment thereof, or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, or such supplement thereto or amendment thereof, and the application of such provision to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this act and such supplement thereto and amendment thereof would have been adopted had such invalid provision not been included therein. L.1946, c. 38, p. 95, § 17, as amended L.1947, c. 75, p. 451, § 10.

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34:13B-18. Sixty-day Notice of Intention to Strike

It shall be unlawful for any employee or representative of any craft, class or group of employees of a public utility to institute, participate in or aid in the conduct of a strike or work stoppage or for a public utility or any officer, agent or representative thereof to institute, participate in or aid in any lockout until sixty days shall have elapsed after written notice of intention to institute, participate or aid in the conduct of a strike or work stoppage or lockout has been served by the employee or representative intending to institute, participate in or aid in a strike or work stoppage or the public utility intending to institute, participate in or aid in a lockout upon the State Board of Mediation and the other party to the dispute. Said notice may be served on or after but not before the termination of the collective bargaining agreement between the parties and in cases where no such collective bargaining agreement exists, may be served at or after but not before the expiration of

the notice of desired changes required to be served under the provisions of the act which this act supplements.[1] During the aforementioned sixty-day period it shall be the duty of all parties to continue their endeavors in good faith to reach an agreement and said sixty-day period may be extended by written agreement of the parties, filed with the State Board of Mediation. L.1947, c. 47, p. 160, § 2.

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34:13B-19. Strike After Seizure

After the Governor has taken or shall take possession of any plant, equipment or facility of any public utility for the use and operation by the State of New Jersey in the public interest, pursuant to the provisions of section thirteen of the act which this act supplements,[1] and during the continuance of such possession, the relationship between the Government of the State of New Jersey and the persons employed at such public utility, except those who elect to quit such employment, shall be that of employer and employee; and during the continuance of such possession it shall be unlawful for any person employed at such plant or facility to participate in or aid in any strike, concerted work stoppage or concerted refusal to work for the State as a means of enforcing demands of employees against the State or for any other purpose contrary to the provisions of this act.[2] L.1947, c. 47, p. 161, § 3, as amended L.1947, c. 75, p. 447, § 4.

1. Section 34:13B-13
2. Sections 34:13B-18 to 34:13B-25

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34:13B-20. Board of Arbitration; Submission to Board

Within ten days after the Governor has taken or shall take possession of any plant, equipment or facility of any public utility pursuant to the provisions of section thirteen of the act which this act supplements,[1] or within ten days after the effective date of this act, whichever is later, any and all disputes then existing between the public utility

and the employees shall be submitted to a Board of Arbitration to be constituted within such ten-day period as follows: the management of such public utility and the representatives of such employees shall each designate in writing one person to serve as a member of such Board of Arbitration and file such designation with the State Board of Mediation; the two persons so designated shall choose three disinterested and impartial persons and shall file such designations with the State Board of Mediation, and the five thus appointed shall compose, and act as the Board of Arbitration. Such board shall elect one of its members to serve as chairman thereof. In the event that the persons designated by the management and the representatives of the employees shall, within such ten-day period, fail to choose the three disinterested and impartial persons hereinabove referred to, and file the designations of such persons with the State Board of Mediation, then the Governor shall, upon being notified to that effect by the State Board of Mediation, forthwith appoint such three disinterested and impartial persons to serve as members of such Board of Arbitration and shall designate one of the members of such board to serve as chairman thereof.

In the event that either the management of the public utility involved or the representatives of the craft, class or group of employees shall fail or neglect to designate, as hereinabove provided, persons to represent them respectively upon such Board of Arbitration, within such ten-day period, then the Governor shall, upon being notified thereof by the State Board of Mediation, forthwith appoint five disinterested and impartial persons to constitute such Board of Arbitration and shall designate one of the members of such board to serve as chairman thereof. All appointments hereinabove required to be made shall be filed with the State Board of Mediation. L.1947, c. 47, p. 161, § 4, as amended L.1947, c. 75, p. 447, § 5.

1. Section 34:13B-13

34:13B-21. Hearing; Powers of Board; Refusal to Testify or Produce Evidence

The Board of Arbitration shall promptly proceed to arbitrate the matters submitted to it. It shall promptly hold hearings and shall have the power to administer oaths and compel by subpoena the attendance of witnesses and the furnishing and production by any person of such information, books, records, papers and documents as may be necessary to a determination of the issue or issues in dispute. If a person subpoenaed to attend any hearing refuses or fails to appear or to be examined, or to answer any question or to produce any books, records, papers and documents when ordered so to do by the Board of Arbitration, such board may apply to the Supreme Court or any justice thereof, who shall have the power of the court for that purpose, to make an order returnable in not less than two nor more than five days, directing such person to show cause before the court or a justice thereof why he should not comply with the subpoena or direction or order of such board, and upon return of such order the court or justice shall examine such person, under oath, and thereupon make such order as may be required and any refusal or failure to obey such order of the court or the justice may be punished by said court or by said justice as a contempt of the Supreme Court. Both parties to the dispute shall be afforded an opportunity to be present at the hearing, both personally and by counsel, and to present such oral and documentary evidence as the Board of Arbitration shall deem relevant to the issue or issues in controversy. L.1947, c. 47, p. 162, § 5, as amended L.1947, c. 75, p. 449, § 6.

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34:13B-23. Findings and Award; Duration of Order; Retroactive Effect; Appeal

The findings, decision and order of the Board of Arbitration shall, unless modified or reversed on appeal, be conclusive and binding upon all of the parties to the dispute and such order of such board shall be complied with by the parties in accordance with the terms thereof. The order of the Board of Arbitration shall remain in effect for a period of one year from the date thereof unless the board shall fix a lesser period therefor after having given due consideration to the duration of any prior contract between the public utility and the employees thereof, and any practice with respect to the duration of such contract existing in the same or similar industries. The Board of Arbitration may, in its discretion, with respect to any labor dispute existing at the effective date of this act, provide that any award made by it shall be retroactive to the day of the return to work by the employees or, with respect to any labor dispute occurring after the effective date of this act, to the day of the taking of possession pursuant to the provisions of section thirteen of the act which this act supplements,[1] or to the day of the return to work by the employees, or to the day of the termination of any contract between the public utility and its employees.

Within thirty days after the Board of Arbitration has filed with the Governor such findings, decision and order, any party to the dispute aggrieved thereby may secure judicial review thereof by appeal therefrom to the Supreme Court. A copy of the notice of appeal shall be served upon the chairman of the Board of Arbitration and upon the other party to the dispute or its attorney. In any such appeal the findings of the Board of Arbitration upon the facts, if supported by any evidence, shall be conclusive. The filing of such notice of appeal shall not supersede or stay the order of the Board of Arbitration unless the Supreme Court or a justice thereof shall so direct. L.1947, c. 47, p. 163, § 7, as amended L.1947, c. 75, p. 449, § 7.

1. Section 34:13B-13.

34:13B-24. Lockout, Strike or Work Stoppage; Penalty

Any lockout, authorized or engaged in, by any public utility in violation of any provision of this act,[1] or any failure or refusal by a public utility to abide by the terms of any decision or order made by any board of arbitration constituted in accordance with the provisions of this act, or any strike or concerted work stoppage, authorized or engaged in, or continued to be engaged in by any labor union or representative of any craft, class or group of employees of a public utility, or any concerted action on the part of a substantial number of the members of any labor union resulting in an interruption of the operation of any public utility, in violation of any provision of this act or in connection with any refusal to abide by the terms of any decision or order made by any board of arbitration constituted in accordance with the provisions of this act, shall subject such public utility and any officer or agent thereof participating or aiding therein or such labor union or representative of any craft, class or group of employees of a public utility to a penalty in the sum of ten thousand dollars ($10,000.00) per day for each day during the period of such lockout, strike, concerted work stoppage, or failure or refusal to abide by the terms of such decision or order, such penalty to be recovered in the name of the State in an action at law in any court of competent jurisdiction. L.1947, c. 47, p. 164, § 8, as amended L.1947, c. 75, p. 450, § 8; L.1950, c. 14, p. ——, § 2.

1. Sections 34:13B-18 to 34:13B-25

34:13B-25. Violations

Any officer or agent of any public utility or labor union, or any person performing the duties of such officer or agent, who shall willfully violate, or aid and abet the violation of any of the provisions of this act,[1] or attempt to do so, shall, for each such offense, be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five dollars ($25.00) nor more than two hundred fifty dollars ($250.00). Each day's continuance of the violation shall constitute a separate offense. L.1947, c. 47, p. 164, § 9, as amended L.1947, c. 75, p. 453, § 12.

1. Sections 34:13B-18 to 34:13B-25

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34:13B-26. Injunction; Declaratory or Other Relief

Notwithstanding the provisions of any other law to the contrary:

The commissioner, director or other chief administrative officer of any department or agency of the Government of the State of New Jersey through which the power and authority of the Governor in the use and operation of the plant, equipment or facility of any public utility is exercised pursuant to the provisions of section thirteen of chapter thirty-eight of the laws of one thousand nine hundred and forty-six[1] or the Attorney-General, may file a bill in the Court of Chancery in the name of this State, on the relation of said commissioner, director or other chief administrative officer or Attorney-General, as the case may be, for an injunction to prohibit any violation of any of the provisions of this act,[2] or of any provision of any act which this act supplements or amends, or for any declaratory and other relief. Every such cause shall proceed in the Court of Chancery according to the rules and practice of bills filed in the name of the State of New Jersey or the Attorney-

General on the relation of individuals or departments, or for the protection of property owned or operated by the State of New Jersey; and causes of emergency shall have precedence over other litigation pending at the time in the Court of Chancery, and the final hearing may be had at such time and on such notice as the Chancellor shall direct; and the Court of Chancery shall have power and authority to grant such relief and make or render such orders and decrees as it shall determine to be equitable and just in the premises. L. 1947, c. 75, p. 452, §11, supplementing L. 1946, c. 38.

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34:13B-27. WRITTEN FINDINGS AND DECISION; FACTORS TO BE CONSIDERED

(a) It shall be the duty of each board of arbitration appointed pursuant to chapter forty-seven of the laws of one thousand nine hundred and forty-seven to make written findings of fact and to promulgate a written decision and order upon the issue or issues presented in each case and on the basis of the evidence in the record; *provided, however,* that such issue or issues shall have been in dispute between the parties; *and provided further,* that the board shall not render findings of fact, decision or order upon any issue or issues which are not proper subjects for collective bargaining for the reason that they do not pertain to wages, hours or conditions of employment.

(b) Where there is no contract between the parties, or where there is a contract but the parties are negotiating a new contract or amendments to the existing contract, and issues arise which are the subject of dispute between the parties in such negotiations, the board shall make a just and reasonable determination of the dispute, and in determining such issues, base its findings of fact, decision and order upon the following factors:

(1) The interests and welfare of the public.

(2) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings, and the wages, hours and conditions of employment of employees doing the same, similar or comparable work or work requiring the same, similar or comparable skills and expenditure of energy and effort, giving consideration to such factors as are peculiar to the industry involved.

(3) Comparison of wages, hours and conditions of employment as reflected in industries in general and in public utilities in particular throughout the nation and in the State of New Jersey.

(4) The security and tenure of employment with due regard for the effect of technological changes thereon as well as the effect of any unique skills and attributes developed in the industry.

(5) Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, arbitration or otherwise between the parties or in the industry.

(c) The board shall not be bound by the strict rules of evidence applicable in a court of law.

(d) The findings of fact, decision and order of the board shall be made within thirty days after submission of the issues in dispute or within such additional period as may be agreed upon by a majority of the members of such board. The findings of fact, decision and order of such board shall forthwith be filed by such board with the Governor, and a copy of such findings of fact, decision and order shall be submitted to each of the parties to the dispute and another copy thereof filed with the State Board of Mediation. L. 1949, c. 308, p. 995, § 1.